

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

IN RE THE PERSONAL)
RESTRAINT PETITION OF)
RYAN WAYNE ALLEN) NO. 41345-1-II
) RESPONSE TO
) PERSONAL RESTRAINT

Comes now State of Washington, by and through Olivia Zhou,
Deputy Prosecuting Attorney, in and for Thurston County, and files its
response to petitioner's personal restraint petition pursuant to RAP
16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

Petitioner Allen remains free. He has served his sentence and
is not on community custody. See Appendix A, Judgment and
Sentence after Remand, Thurston County Superior Court Cause No.
07-1-02163-2, entered on April 22, 2010.

II. STATEMENT OF PROCEEDINGS

2.1 1994 Predicate Offense

On July 11, 1994, Petitioner plead guilty to one count of
residential burglary in Thurston County Juvenile Court. The
disposition order did not provide notice of a firearm prohibition. See
Appendix B, Juvenile Statement on Plea of Guilty and Disposition
Order, Thurston County Juvenile Court Cause No. 94-8-00455-6.

2.2 Current Offenses

The State agrees with the facts underlying the unlawful possession of firearm charges as laid out in Petitioner's brief.

Following the charges of unlawful possession of firearm, the State added an additional charge of bail jumping. At no time did Petitioner raise the issue that the predicate offense court [Thurston County Juvenile Court] failed to advise him that he was prohibited from possessing firearms.

On April 3, 2008, Petitioner was convicted in Thurston County Superior Court of two counts of unlawful possession of a firearm in the first degree and one count of bail jumping. Appendix C, Judgment and Sentence, Thurston County Superior Court Cause No. 07-1-02163-2. Petitioner appealed to this Court, which affirmed the two firearm offenses but reversed the conviction of bail jumping. The case was then remanded for resentencing. Appendix D, Unpublished Opinion, *State v. Allen*, 151 Wn. App. 1041, 2009 WL 2437229 (Aug. 11, 2009). Petitioner then filed petition for review with Washington Supreme Court, appealing the decision from this Court. Appendix E, Petition for Review, filed on November 13, 2009. The Supreme Court denied Petitioner's Petition for Review. Appendix F, Order, *State v. Allen*, 168 Wn.2d 1012, 227 P.3d 852 (Mar. 3, 2010) (Table, No.

83604-3). Petitioner was resentenced on April 22, 2010. Appendix A.

III. RESPONSE TO ISSUES RAISED

3.1 The State respectfully requests that the Court deny Petitioner's PRP for reversal of conviction because Petitioner was neither affirmatively misled nor prejudiced by the predicate offense court

"Personal restraint petitions are not a substitute for direct review." *In re Pers. Restraint of Dalluge*, 162 Wn.2d 814, 817, 177 P.3d 675 (2008). Although petitions raising constitutional or non-constitutional issues not raised at trial or on direct appeal are no longer absolutely barred, special restrictions still apply. *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 85-87, 660 P.2d 263 (1983). To obtain relief on new issues, the petitioner must establish he was actually and substantially prejudiced by the error. *In re Pers. Restraint of Brown*, 143 Wn.2d 431, 445, 21 P.3d 687 (2001).

Even if a petitioner can meet the thresholds required for a constitutional or non-constitutional issue, he is not automatically entitled to relief or a reference hearing. A personal restraint petitioner is required by the rules to provide both "a statement of...facts upon which the claim is...based and the evidence to support the factual allegations. RAP 16.7(a)(2)(i). A procedural prerequisite to consideration on the merits is that "the petitioner must state with

particularity facts which, if proven, would entitle him to relief"; "bald assertions" and "conclusory allegations" are not enough. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992).

In the present case, Petitioner did not raise the issue of the juvenile court's failure to provide notice pursuant to RCW 9.41.047(1) at trial. Additionally, Petitioner was not affirmatively misled by the juvenile court. Finally, Petitioner cannot demonstrate actual prejudice from the juvenile court's failure to provide notice of the firearm prohibition.

Addressing RCW 9.41.047(1), the Washington Supreme Court held that reversal of conviction for Unlawful Possession of Firearm is appropriate when the sentencing court affirmatively misleads the defendant into believing that he is allowed to possess firearms. *State v. Minor*, 1623 Wn.2d 796, 803-04, 174 P.3d 1162 (2008). In *Minor*, there was nothing in the record to indicate that the predicate offense court gave Minor oral notice that he could not possess firearms, and it failed to check the box on the sentencing form which preceded the written notice. *Id.* at 801. The Court concluded that because the sentencing court had both failed to provide notice *and affirmatively misled* the defendant, reversal of the unlawful possession of a firearm

conviction was warranted. *Id.* at 804.

In reaching its decision, the Washington Supreme Court reiterated lower courts' holdings that a conviction for unlawful possession of a firearm is invalid where defendant *can demonstrate actual prejudice*. See *State v. Leavitt*, 107 Wn. App. 361, 27 P.3d 622 (2001). In *Leavitt*, this Court indicated that prejudice can be demonstrated through the defendant's "guileless actions" of volunteering more information to police than that which was asked of him. *Id.* at 367-68. In *Leavitt*, the defendant pled guilty to violation of a protection order and received a one-year suspended sentence. *Id.* at 363. The court set a termination date one year following sentencing, and told him that one of the conditions of his sentence was to not possess firearms. *Id.* Furthermore, the Conditions, Requirements and Instructions that the Department of Corrections provided to Leavitt left blank the box next to the paragraph explaining firearm possession prohibition. *Id.* This Court concluded that as a result of the combination of the "*unusual facts of the case*", *Id.* at 368, emphasis added, Leavitt had been denied due process. Additionally, prejudice was clearly demonstrated when instead of simply answering the police's question about whether he had weapons in his house, "Leavitt spontaneously volunteered that he had firearms in his car, for

which he was convicted and sentenced.” *Id.*

Similar to *Leavitt*, the Court of Appeals Division Three also held that a defendant’s due process is violated when he is affirmatively misled by the predicate offense court. *State v. Moore*, 121 Wn. App. 889, 895, 91 P.3d 136 (2004). In *Moore*, the defendant appeared in juvenile court on three separate occasions. On each occasion, the sentencing court failed to advise him that the charges to which he was pleading to prohibited him from possessing firearms. *Id.* at 892-95. Additionally, the sentencing court affirmatively told him that he could “put the ordeal behind him if he stayed out of trouble.” *Id.* at 896. Subsequent to his guilty pleas in juvenile court, Moore was charged with unlawful possession of a firearm. *Id.* at 891-92. On appeal, Division Three affirmed the dismissal on the grounds that the juvenile court’s colloquy with Moore during disposition along with its failure to provide notice of the firearm prohibition on three separate occasions constituted a violation of Moore’s due process. *Id.* at 897 n.4.

In the present case, the juvenile court did not mislead Petitioner. Unlike the predicate offense court in *Minor* and *Leavitt*, the juvenile court did not affirmatively mislead Petitioner. In the order of disposition, there was no mention of firearm prohibition. The juvenile court did not affirmatively mislead Petitioner into believing the firearm

prohibition did not apply to him; the court simply did not provide him notice. Additionally, unlike the predicate offense court in *Moore*, the juvenile court did not fail to advise Petitioner of the firearm prohibition on several occasions. In the present case, the juvenile court only failed to advise him on one occasion.

The present case is similar to *State v. Carter*, 127 Wn. App. 713, 112 P.3d 561 (2005). In *Carter*, the defendant also had a juvenile conviction for burglary. *Id.* at 715. As an adult, he was found in possession of a firearm and charged with illegal possession based on the burglary conviction. *Id.* During trial, Carter asked the court to dismiss the unlawful possession of firearm charge on the basis that his due process rights were violated because he was not provided notice in juvenile court that he was prohibited from possessing firearms. *Id.* The Court of Appeals, Division Three, concluded that while the predicate offense court failed to inform Carter according to statute, Carter was not "affirmatively misled." *Id.* at 720-21. In reaching its decision, the court distinguished its case from *Moore*. The court concluded that because Carter was not affirmatively told he could "put the ordeal behind him if he stayed out of trouble," like *Moore* was, Carter was not denied due process. *Id.* The court in *Carter* did note that between the juvenile conviction and the charge at

issue, he had been convicted of another felony and had been given notice at that time. *Id.* However, the court did not base its decision on that factor.¹

The facts in the present case are alike to the facts in *Carter*. Similar to *Carter*, Petitioner was not affirmatively misled by the predicate offense sentencing court. Just like the defendant in *Carter*, Petitioner was simply not provided notice that he was prohibited from possessing firearms.

Petitioner argues that he was affirmatively misled when the Thurston County Sheriff's Office released his rifles to him after the disposition of a domestic violence case involving his girlfriend. However, the facts provided by Petitioner are not enough to show that there was a violation of due process. First, the letter from the Thurston County Prosecutor's Office does not indicate that the deputy prosecutor, prior to authorizing the release of the rifles, ran a NCIC check on Petitioner to make sure that he was allowed to possess firearms. Second, even though there is a policy at the Sheriff's Office to run a NCIC check prior to the release of weapons, there is no

¹ The language suggests that the court in *Carter* based its decision on the fact that the defendant was not affirmatively misled rather than the intervening felony conviction. See *State v. Carter*, 127 Wn. App. at 720-21. ("While the predicate offense court apparently failed to inform Mr. Carter according to the statute, he was not affirmatively misled. Moreover, since he was convicted of a felony in 2002 and was notified at that time...he was not prejudiced.")

indication that an NCIC check was *actually* conducted prior to releasing the rifles to Petitioner. Finally, the predicate offense court did not preside over the domestic violence incident. Pursuant to *Minor*, a defendant's due process is violated when the predicate offense court affirmatively misleads the defendant. Assuming *arguendo*, even if Petitioner was misled, it was not by the juvenile court; instead, it would have been by law enforcement. Pursuant to RCW 9.41.047(1), there is no requirement for law enforcement to advise Petitioner that he is prohibited from possessing firearms.

Petitioner also cannot demonstrate actual prejudice resulting from the predicate offense court's failure to provide notice. Unlike the defendant in *Leavitt* who volunteered information to the police which was not asked of him, Petitioner, in this case, did not volunteer extra information to the sheriff deputy who contacted him. In the present case, Petitioner told the sheriff deputy about his rifle only *after* the deputy asked whether he [Petitioner] had any weapons inside his home.

Petitioner argues that his convictions should be reversed pursuant to *State v. Breitung*, 155 Wn. App. 606, 230 P.3d 614 (2010). In *Breitung*, the defendant was contacted by sheriff deputies after they received a complaint that he [defendant] had pointed a gun

at two men. *Id.* at 617. Upon being contacted, Breitung told the deputies about the various guns he had and provided a description of the guns. *Id.* As a result, he was charged with unlawful possession of a firearm. *Id.* At trial, Breitung asked for a dismissal of the charge of unlawful possession of a firearm on the basis that he was not advised by the predicate offense court that his simple assault domestic violence conviction would prohibit him from possessing firearms. *Id.* at 619-20. The trial court denied the motion and Breitung appealed. On appeal, this Court was asked to address a case of first impression, whether failure to provide notice alone warrants reversal. *Id.* at 622. This Court answered in the affirmative in light of the fact that Breitung's responses to law enforcement regarding his guns were more than was required by the officers' questions. *Id.* at 623.²

The present case is distinguishable from *Breitung*. Unlike the defendant in *Breitung*, Petitioner did not raise the issue of lack of notice at trial. Furthermore, Petitioner was not actually prejudiced

2 *State v. Breitung*, holding: "In *Leavitt*, we held that the predicate offense court's noncompliance with RCW 9.41.047 clearly and substantially prejudiced Leavitt as demonstrated in part by his 'guileless actions' of volunteering more information to police than was asked of him. Similarly, Breitung's responses were candid and more than was required by the officers' questions. He volunteered information about his various guns and their descriptions and twice offered to retrieve his guns from his residence which the officers declined." 155 Wn. App. at 623.

from the lack of notice. Unlike the defendant in *Breitung* who offered more information to law enforcement than was required of him, Petitioner only answered questions that were asked of him. Therefore, unlike the defendant in *Breitung* who was able to demonstrate actual prejudice from the lack of notice, Petitioner in this case cannot demonstrate actual prejudice.

3.2 The State respectfully requests that the Court deny Petitioner's PRP for reversal of conviction because this issue has been addressed in a direct appeal.

A petitioner may not raise in a personal restraint petition an issue which was "raised and rejected on direct appeal unless the interests of justice require re-litigation. *In re Pers. Restraint of Lord*, 123 Wn.2d 296, 303, 868 P.2d 835 (1994). In the present case, re-litigation is not required since Petitioner raised the issue of lack of notice through his Statement of Additional Grounds on direct appeal and also in a petition for review to the Supreme Court. In both courts, Petitioner was denied.³ Additionally, re-litigation is not required especially since Petitioner was neither affirmatively misled nor prejudiced. Even though Petitioner was not provided notice, ignorance of the law, pursuant to *Minor*, is not a defense for the

³ See Appendix D, Unpublished Opinion, *State v. Allen*, 151 Wn. App. 1041, 2009 WL 2437229 (Aug. 11, 2009); Appendix F.

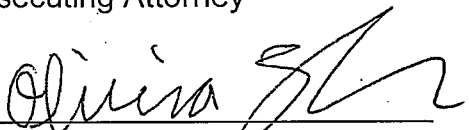
charge of unlawful possession of a firearm.

V. CONCLUSION

For the above reasons, the State respectfully requests that this Court deny Petitioner's petition to reverse his convictions.

RESPECTFULLY SUBMITTED this 22 day of June,
2011.

JON TUNHEIM
Prosecuting Attorney


OLIVIA ZHOU, WSBA #41747
Deputy Prosecuting Attorney
Attorney for Respondent

APPENDIX A

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

vs.

No. 07-1-02163-2

RYAN WAYNE ALLEN,

Defendant.

FIRST AMENDED

FELONY JUDGMENT AND SENTENCE (FJS)

After Remand from Ct of Appeals.
Prison (non-sex offense)

SID: WA17013312

If no SID, use DOB: 07/24/1977

PCN: 766942148 BOOKING NO. C0148394

I. HEARING

- 1.1 A sentencing hearing was held on APRIL 18, 2008 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present. *AND RE-SENTENCING HEARING TO THE COURT OF APPEALS DECISION IN #37646-6-12 DATED 8-11-09, WAS HELD ON APRIL 22, 2010.*

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on APRIL 3, 2008
by ☐ plea ☒ jury-verdict ☐ bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9.41.040(1)(a)	DECEMBER 21, 2007
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9.41.040(1)(a)	DECEMBER 21, 2007

as charged in the FIRST AMENDED information.

☐ Additional current offenses are attached in Appendix 2.1.

☐ The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

☐ A special verdict/finding for use of firearm was returned on Count(s) _____. RCW 9.94A.602, 9.94A.533.

☐ A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____
_____. RCW 9.94A.602, 9.94A.533.

- ☐ A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority; or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- ☐ The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- ☐ This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☐ The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- ☐ The crime charged in Count(s) _____ involve(s) domestic violence.
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____
- None of the current offenses constitute same criminal conduct except: _____

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 RES. BURG.	1994	THURSTON CO. 94-8-455-6	6-5-94	J	NV
2					
3					
4					
5					

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- ☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525): _____
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:
- None of the prior convictions constitutes same criminal conduct except _____

2.3 SENTENCING DATA:

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS*	TOTAL STANDARD RANGE	MAXIMUM TERM
I	1	VII	21-27 mos.	N/A	21-27 mos.	10 YRS
II	1	VII	21-27 mos.	N/A	21-27 mos.	10 YRS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present. ☐ Additional current offense sentencing data is attached in Appendix 2.3.

- 2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
- ☐ within ☐ below the standard range for Count(s) _____.
 - ☐ above the standard range for Count(s) _____.
 - ☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 - ☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.
- Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

- 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- ☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):
- _____

- 2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: _____

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 ☒ The court DISMISSES Counts III ☐ The defendant is found NOT GUILTY of Counts

PLASANT TO THE COURT OF APPEALS DECISION IN #37646-6-12
DATED 8-1-09

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

RTN/RJN

\$ RESERVED Restitution to: _____

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided
confidentially to Clerk of the Court's office.)

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment RCW 10.99.080

CRC \$ 200.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ _____ FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SFS/SFW/WRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB \$ 300.00 Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine
deferred due to indigency RCW 69.50.430

CDF/LDI/FCF \$ _____ Drug enforcement fund of Thurston County RCW 9.94A.760

NTF/SAD/SDI

\$ _____ Thurston County Drug Court Fee

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee [] not imposed due to hardship RCW 43.43.7541

RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000
maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 1100.00 TOTAL RCW 9.94A.760

The above total may not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing may be set by the prosecutor or is scheduled for _____.

[] RESTITUTION. Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

RJN NAME of other defendant CAUSE NUMBER (Victim's name) (Amount-\$)

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$_____ per month commencing_____. RCW 9.94A.760.

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

- [] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: (JLR) RCW 9.94A.760.

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

[] Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed with this Judgment and Sentence.

4.4 OTHER: THE MAXIMUMS IN EVIDENCE ARE FORFEIT AND
SHALL BE ADJUDGED IN ACCORD WITH STATE
LAW AT THE CONCLUSION OF ALL PROCEEDINGS.

- ALL TIME SERVED AND MONIES PAID PURSUANT TO THE
ORIGINAL JUDGMENT AND SENTENCES ARE CREDITED TOWARDS THIS
FIRST AMENDED JUDGMENT AND SENTENCE.

- SINCE THE ORIGINAL 30 MONTH SENTENCE HAS ALREADY BEEN
SERVED, DEFENDANT IS NOT AGAIN REQUIRED TO BE COMMITTED
TO THE DOC

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

- (a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

27 months on Count I _____ months on Count _____
27 months on Count II _____ months on Count _____
_____ months on Count _____ months on Count _____

Actual number of months of total confinement ordered is: 27 mos.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above.)

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

NON-FELONY COUNTS: N/A

Sentence on counts _____ is/are suspended for _____ months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence.

_____ days of jail are suspended on Count _____
_____ days of jail are suspended on Count _____

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6 [] COMMUNITY CUSTODY is ordered as follows: N/A

Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories, and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers;		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Pay all court-ordered legal financial obligations

Report as directed to a community corrections officer

Notify the community corrections officer in advance of any change in defendant's address or employment

Remain within prescribed geographical boundaries to be set by CCO

☐ The defendant shall not consume any alcohol and shall submit to random breath testing as directed by DOC for purposes of monitoring compliance with this condition.

☐ Defendant shall have no contact with: _____

☐ The defendant shall undergo evaluation and fully comply with all recommended treatment for the following:

☐ Substance Abuse

☐ Mental Health

☐ Sexual Deviancy

☐ Anger Management

☐ Other: _____

☐ The defendant shall enter into and complete a certified domestic violence program as required by DOC or as follows: _____

☐ The defendant shall not use, possess, manufacture or deliver controlled substances without a valid prescription, not associate with those who use, sell, possess, or manufacture controlled substances and submit to random urinalysis at the direction of his/her CCO to monitor compliance with this condition.

☐ The defendant shall comply with the following additional crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

- 4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.
- 4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 ☐ The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

APPENDIX B

THE SUPERIOR COURT OF THE STATE OF WASHINGTON

For the County of Thurston

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

JUVENILE COURT

PM 1:19
BETTY J. GOULD, CLERK

STATE OF WASHINGTON,

Petitioner,

vs

Respondent,

DOB

Ryan Allen

2/24/22

BY *[Signature]*

NO. *94-8-435-6*

STATEMENT OF JUVENILE
OFFENDER ON PLEA OF GUILTY

- 1 My name and date of birth are correctly stated above. I am 14 years old.
- 2 I know that I have the right to have a lawyer assist me at any time, whether or not I plead guilty to the charge(s) against me. I know that if I cannot afford a lawyer, the Court will give me a lawyer at no cost to me. I know that a lawyer could look at all the files in my case, tell me about the law and my rights, talk with the police, probation counselors, and prosecuting attorney, and assist me at trial and sentencing (disposition). With this knowledge, I have decided to:

☐ I voluntarily give up my right to a lawyer. ☒ be represented by a lawyer. *Mark D. Shaper*
- 3 I know that I have been charged with committing the following offense(s), having received a copy of the charge(s).

Rob. Burg.
- 4 I know that if I plead NOT GUILTY to the charge(s), I have the following rights.
 - (a) To hear and question any witnesses who might testify against me.
 - (b) To have my own witnesses testify for me, and to have those witnesses required to appear at no cost to me.
 - (c) To testify myself, or to choose not to testify, and my refusal to testify cannot be held against me.
 - (d) To have a speedy and public trial in the county where the charged offense(s) allegedly occurred.
 - (e) To make the prosecuting attorney prove each element of the charged offense(s) beyond a reasonable doubt.
 - (f) To appeal the case if the Court finds me guilty of the offense(s) at trial.
- 5 I know that if I plead GUILTY to committing the charged offense(s), I give up the rights set forth in #4, that I will be found to have committed the offense(s), and that I cannot appeal that finding of guilt.
- 6 I know that if I am found guilty, the Court will then consider my juvenile offense record, which is as follows.

Theft 3° 1/93 (0-12)
- 7 I know that the offense(s) I am charged with in this case, combined with my juvenile offense record, will put me in the following classification on each charge.

<input type="checkbox"/>	Minor Offender, which would allow the Court to place me on community supervision.
<input checked="" type="checkbox"/>	Middle Offender, which would allow the Court to place me on community supervision, and to place me in confinement
<input type="checkbox"/>	Serious Offender, which would require the Court give me the sentence in #8 below, unless I show that to be unjust.

I know that Community Supervision may include for each charge (1) up to 12 months of probation-like restrictions, (2) up to \$100 fine, (3) up to 150 hours of community service (working for the public free of charge), (4) counseling and information classes, (5) restrictions on places I can go and on people I can see, (6) curfew, and (7) random drug testing by urinalysis.
- 8 I know that for a person with my offense record, the standard range sentence guidelines are as follows.

Count One
Rob Burg
5-10
0-50
3-48
6-9
100
6

Count Two

Count Three

charge
weeks commitment
days detention
fine
hours community service
months community supervision
crime victims fund
court costs

COPIES TO: ☒ P.D.
☒ PROS. ATTY.
☐ DEF. ATTY.

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9. I know that the maximum punishment I can receive is commitment until I am 21 years old, and that I can be sentenced for no longer than the adult maximum sentence for the offense(s) I am charged with.
10. I know that my plea of guilty and the Court's acceptance of my plea will become part of my criminal history, and that if the offense is a felony and I was 15 or older when the offense was committed, the plea will remain part of my criminal history if I commit another crime before my 23rd birthday.
11. I know that if I plead guilty or if I am found guilty at trial, my criminal history may cause another court to give me a longer sentence for any offense I commit in the future.
12. I know that if I plead guilty, the Prosecuting Attorney will recommend the following:
 Confinement 5; Community Supervision 900; Community Service hours 48; Fine \$; Costs \$ 6; Crime Victim's Fund \$ 100; Restitution to victim(s), if any, and/or

no contact w/ Tom Malanich & V- Debra Yeager

13. I know that the Probation Officer will recommend the following.
 Confinement 10; Community Supervision 9; Community Service hours 22; Fine \$; Costs \$ 6; Crime Victim's Fund \$ 100; Restitution to victim(s), if any, and/or

14. I know that the Court does not have to follow any of the above recommendations, and that I have the right to make my own sentence recommendations. I know that the Court must impose a sentence within the standard range unless the Court finds substantial and compelling reasons not to do so. If the Court goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence itself.

15. I have not been given any promises other than those listed above. I have not been threatened with any harm. Understanding all of the above recommendations, I freely and voluntarily PLEAD GUILTY to the following:

Residential Burglary

16. This is what I did that resulted in my being charged with the offense(s):

On or about June 5, 1994 I entered & remained unlawfully in a residence belonging to Debra Yeager. While inside we ate some of her food. This occurred in Thurston County.

RA

17. I have read or someone has read to me everything printed above. I know that I may have a copy of this statement and that I may ask any questions I choose before signing it.

Carol L. Case 17052
 Deputy Prosecuting Attorney WSBAM

Ryan Allen
 Juvenile
Debra Yeager
 Defense Attorney WSBAM

JUDGE'S CERTIFICATE

The Court certifies that the juvenile has indicated that the foregoing was read to or by the juvenile, and that the juvenile fully understands the contents.

Date

July 11, 1994

wpl/wdhypla/5-10-93

Scott New
 Judge/Court Commissioner

I accept the plea

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
SUPERIOR COURT OF THE COUNTY OF THURSTON
THURSTON COUNTY, SEVILLA COURT

STATE OF WASHINGTON

At J.L. PH 1:12 Cause no. 94-8-455-6

VS Ruben W. Allevy J. GOULD, CLERK

(DOB: 7-29-77)

DISPOSITION ORDER

Respondent

DEPUTY

At a Disposition Hearing held on 7-11-94

the Respondent ☐ waived the right to counsel

☒ was represented by Martin Reyes

The Respondent having ☒ pled guilty ☐ was found guilty
at trial of the offense(s) of: Residential

Burglary

as set forth in the

☒ Original Information as to cause no. 94-8-455-6

☐ Information as to cause no.

☐ Information as to cause no.

and the Respondent having been found to be a

☐ minor offender,

☒ middle offender,

☐ serious offender,

THE COURT REENDERS THE FOLLOWING ORDER:

STATUTORY MITIGATING/AGGRAVATING FACTORS

The Court finds that the following STATUTORY MITIGATING FACTORS exist:

- ☐ The Respondent's conduct neither caused nor threatened serious bodily injury or the Respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury.
- ☐ The Respondent acted under strong and immediate provocation.
- ☐ The Respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense.
- ☐ Prior to his or her detection, the Respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained.
- ☐ There has been at least one year between the Respondent's current offense and any prior criminal offense.

The Court finds that the following STATUTORY AGGRAVATING FACTORS exist:

- ☐ In the commission of the offense, or in flight therefrom, the Respondent inflicted or attempted to inflict serious bodily injury to another.
- ☐ The offense was committed in an especially heinous, cruel, or depraved manner.
- ☐ The victim(s) was particularly vulnerable.
- ☐ The Respondent has recent criminal history or has failed to comply with the conditions of a recent dispositional order or diversion agreement.
- ☐ The current offense included a finding of sexual motivation pursuant to RCW 9A.127.
- ☐ The Respondent was the leader of a criminal enterprise involving several persons.
- ☐ There are other complaints which have resulted in a diversion or a finding or plea of guilty, but which are not included as criminal history.

DISPOSITION ORDER - page 1 of 3

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PROS. ATTY
DEF. ATTY

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9

8

CONFINEMENT

THE COURT HEREBY ORDERS CONFINEMENT IN THE FOLLOWING MANNER:

- ☒ Serve 10 days of CONFINEMENT at the Thurston County Youth Service Center. Respondent shall maintain good behavior while in confinement.
- ☐ The Respondent shall receive credit for _____ days previously served.
- ☐ Confinement may be served via electronic home monitoring conditional upon the Respondent maintaining good behavior while under such electronic home monitoring, including compliance with the terms of the electronic home monitoring agreement.
- ☒ The Respondent shall complete 48 hours of COMMUNITY SERVICE at a rate of no less than sixteen (16) hours per month. The Respondent shall be given credit for _____ hours of community service for _____ day(s) of confinement served.

COMMUNITY SUPERVISION

- ☒ The Respondent shall submit to COMMUNITY SUPERVISION ☒ for a period of 9 months ☐ until _____, which shall run consecutive to any current community supervision.

THE RESPONDENT SHALL COMPLY WITH ALL OF THE FOLLOWING RULES OF COMMUNITY SUPERVISION:

- * Report to the Probation Department as required by the Probation Department.
- * Maintain good behavior and obey all laws.
- * Reside ☐ with mother ☐ with father ☐ with parents ☐ only as approved by the Probation Department and comply with the reasonable rules of that residence.
- * Consume no alcohol or non-prescription drugs; Submit to random urinalyses administered by probation staff.
- * Maintain satisfactory effort and attendance at school or Probation-approved employment. School attendance and/or progress reports shall be provided to the Probation Department as requested thereby.
- * Abide by a curfew of _____ p.m. Sunday through Thursday and _____ p.m. Friday and Saturday, except as modified in writing by the Probation Department.
- * Not associate with anyone on probation or parole except as allowed by the Probation Department.
- Attend and participate in counseling to the satisfaction of his/her Probation Counselor.
- ☐ Respondent shall not hold him/her self out to be a gang member or associate with a person who holds him/her self out to be a gang member. The phrase "hold him/her self out to be a gang member" includes: 1) proclaiming gang membership; 2) by words or conduct advocating gang membership or pride in gang activities; 3) wears two or more articles of clothing indicating gang identification; 4) displays any bandanna in a manner consistent with gang membership; 5) wears any gang insignia; 6) shows any gang signs; 7) has any gang related tattoos, including nicknames; 8) writing gang related signs, graffiti or words.
- ☒ Have no contact with Duke Yeager - V ; (Term) Malaniche.
- ☐ Not enter _____.
- ☐ Obtain a ☐ DRUG/ALCOHOL EVALUATION ☐ _____ EVALUATION and comply with all treatment recommendations set forth in that evaluation to the satisfaction of the Probation Department.

DISPOSITION ORDER- page 2 of 3

MICROFILMED

10

MONETARY OBLIGATIONS

THE RESPONDENT SHALL MAKE THE FOLLOWING MONETARY PAYMENTS:

- ☒ \$ 6 in court costs and a \$ none fine within days.
☒ \$ 100 to the Crime Victims Compensation Fund within days.
☐ \$ to the Thurston County Interlocal Drug Fund within days.
☐ Credit shall be given for \$ towards the days confinement served.
☒ Restitution as may be set by future order of the Court; Jurisdiction shall be extended until age 21 for purposes of determining and satisfying restitution obligations under this order.

OTHER PROVISIONS

- ☐ The Respondent shall comply with all terms, conditions, and programming as required under the Thurston County Juvenile Court ~~MINIMUM~~ SUPERVISION PROGRAM.

Juvenile Court jurisdiction shall be extended as necessary for the execution and enforcement of this Order pursuant to RCW 13.40.300(1)(c).

- ☐ DISPOSITION is transferred to County.
☐ The Respondent waives speedy disposition per JCR 7.12.
☐ The Respondent shall be transported in custody to County Juvenile Court for purposes of disposition.
☐ The Respondent shall remain under the conditions of release previously imposed.

- ☐ Jurisdiction for community supervision is transferred to County. The Respondent shall report to the County juvenile court within days.

10 days' confinement to be served beginning
July 30, 1994.
Restitution obligations to be strictly
enforced by probation at more than
\$25.00/month.

DATED this 11 day of July, 1994.

Scott M.
JUDGE/COURT COMMISSIONER

Carol S. Case 17052
Deputy Prosecuting Attorney WSB#

Mark A. Meyer
Respondent/Defense Counsel WSB# 18328

DISPOSITION ORDER - page 3 of 3

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(11)

THURSTON COUNTY JUVENILE COURT

APPENDIX C

FILED
SUPERIOR COURT
THURSTON, WA

08 APR 18 41 26

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

vs

No 07-1-02163-2

RYAN WAYNE ALLEN,

Defendant.

FELONY JUDGMENT AND SENTENCE (FJS)

SID WA17013312

If no SID, use DOB 07/24/1977

PCN 766942148 BOOKING NO C0148394

Prison (non-sex offense)

I HEARING

1 1 A sentencing hearing was held on APRIL 18, 2008 and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present

II FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS

2 1 CURRENT OFFENSE(S) The defendant was found guilty on APRIL 3, 2008
by ☐ plea ☒ jury-verdict ☐ bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9 41 040(1)(a)	DECEMBER 21, 2007
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	9 41 040(1)(a)	DECEMBER 21, 2007
III	BAIL JUMPING	9A 76 170(1)	FEBRUARY 14, 2008

as charged in the FIRST AMENDED information

☐ Additional current offenses are attached in Appendix 2 1

☐ The court finds that the defendant is subject to sentencing under RCW 9 94A 712

☐ A special verdict/finding for use of firearm was returned on Count(s) _____ RCW 9 94A 602, 9 94A 533

☐ A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____
_____ RCW 9 94A 602, 9 94A 533

FELONY JUDGMENT AND SENTENCE (FJS)
(RCW 9 94A 500, 505)(WPP CR 84 0400 (S/2006))

07-1-02163-2

08-9-10699-6

Page 1

SCANNED

COPY TO DOC

COPY TO SHERIFF

57

- ☐ A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69 50 401 and RCW 69 50 435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district, or in a public park, public transit vehicle, or public transit stop shelter, or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone
- ☐ A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ RCW 9 94A 605, RCW 69 50 401, RCW 69 50 440
- ☐ The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense RCW 9 94A 030
- ☐ This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A 40 RCW, where the victim is a minor and the offender is not the minor's parent RCW 9A 44 130
- ☐ The court finds that the offender has a chemical dependency that has contributed to the offense(s) RCW 9 94A 607
- ☐ The crime charged in Count(s) _____ involve(s) domestic violence
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number)

None of the current offenses constitute same criminal conduct except

2.2 CRIMINAL HISTORY (RCW 9 94A 525)

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv	TYPE OF CRIME
1 RES BURG	1994	THURSTON CO 94-8-455-6	6-5-94	J	NV
2					
3					
4					
5					

- ☐ Additional criminal history is attached in Appendix 2.2
- ☐ The defendant committed a current offense while on community placement (adds one point to score) RCW 9 94A 525
- ☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9 94A 525)
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46 61 520
- None of the prior convictions constitutes same criminal conduct except _____

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23 SENTENCING DATA

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS*	TOTAL STANDARD RANGE	MAXIMUM TERM
I	2	VII	26-34 mos	N/A	26-34 mos	10 YRS
II	2	VII	26-34 mos	N/A	26-34 mos	" "
III	2	III	4-12 mos	N/A	4-12 mos	5 YRS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh Hom, see RCW 46 b1 520, (JY) Juvenile present [] Additional current offense sentencing data is attached in Appendix 23

- 24 [] EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence
 [] within [] below the standard range for Count(s) _____
 [] above the standard range for Count(s) _____
 [] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act
 [] Aggravating factors were [] stipulated by the defendant, [] found by the court after the defendant waived jury trial, [] found by jury by special interrogatory
 Findings of fact and conclusions of law are attached in Appendix 24 [] Jury's special interrogatory is attached
 The Prosecuting Attorney [] did [] did not recommend a similar sentence

- 25 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein RCW 9 94A 753
 [] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9 94A 753)

- 26 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows _____

III JUDGMENT

- 31 The defendant is GUILTY of the Counts and Charges listed in Paragraph 21 and Appendix 21
 32 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

51

IV SENTENCE AND ORDER

IT IS ORDERED

4.1 Defendant shall pay to the Clerk of this Court

JASS CODE

RTN/RJN

\$ RESERVED Restitution to _____

\$ _____ Restitution to _____

\$ _____ Restitution to _____

(Name and Address—address may be withheld and provided confidentially to Clerk of the Court's office)

PCV

\$ 500.00 Victim assessment RCW 7 68 035

\$ _____ Domestic Violence assessment RCW 10 99 080

CRC

\$ 200.00 Court costs, including RCW 9 94A 760, 9 94A 505, 10 01 160, 10 46 190

Criminal filing fee \$ _____ FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SFS/SFW/WRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB

\$ 300.00 Fees for court appointed attorney RCW 9 94A 760

WFR

\$ _____ Court appointed defense expert and other defense costs RCW 9 94A 760

FCM/MTH

\$ _____ Fine RCW 9A 20 021, [] VUCSA chapter 69 50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69 50 430

CDF/LDI/PCD

\$ _____ Drug enforcement fund of Thurston County RCW 9 94A 760

NTF/SAD/SDI

\$ _____ Thurston County Drug Court Fee

CLF

\$ _____ Crime lab fee [] suspended due to indigency RCW 43 43 690

\$ 100.00 Felony DNA collection fee [] not imposed due to hardship RCW 43 43 7541

RTN/RJN

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38 52 430

\$ _____ Other costs for _____

\$ 1100.00 TOTAL RCW 9 94A 760

The above total may not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered RCW 9 94A 753. A restitution hearing may be set by the prosecutor or is scheduled for _____

[] RESTITUTION Schedule attached

[] Restitution ordered above shall be paid jointly and severally with

NAME of other defendant CAUSE NUMBER (Victim's name) (Amount-\$)

RJN

57

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction RCW 9 94A 7602, RCW 9 94A 760(8)

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here Not less than \$ _____ per month commencing _____ RCW 9 94A 760

The defendant shall report as directed by the clerk of the court and provide financial information as requested RCW 9 94A 760(7)(b)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments RCW 10 82 090 An award of costs on appeal against the defendant may be added to the total legal financial obligations RCW 10 73 160

[] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50 00 per day, unless another rate is specified here (JLR) RCW 9 94A 760

4 2 DNA TESTING The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43 43 754

[] HIV TESTING The defendant shall submit to HIV testing RCW 70 24 340

4 3 The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence)

[] Domestic Violence No-Contact Order or Antiharassment No-Contact Order is filed with this Judgment and Sentence

4 4 OTHER THE FINGERPRINTS IN EVIDENCE IN THIS
CASE ARE FORFEIT TO THE TCSO AND
SHALL BE DISPOSED OF IN ACCORDANCE WITH
STATE LAW UPON COMPLETION OF ALL
PROCEEDINGS IN THIS MATTER, INCLUDING
APPEALS

51

45 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows

- (a) CONFINEMENT RCW 9 94A 589 Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC)

30 months on Count I _____ months on Count _____
30 months on Count II _____ months on Count _____
12 months on Count III _____ months on Count _____

Actual number of months of total confinement ordered is 30 mos
(Add mandatory firearm and deadly weapon enhancement time to run consecutively to other counts, see Section 2 3, Sentencing Data, above)

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

NON-FELONY COUNTS N/A

Sentence on counts _____ is/are suspended for _____
months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence

_____ days of jail are suspended on Count _____
_____ days of jail are suspended on Count _____

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2 3, and except for the following counts which shall be served consecutively _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment RCW 9 94A 589

Confinement shall commence immediately unless otherwise set forth here _____

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number RCW 9 94A 505 The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court _____

46 [] COMMUNITY CUSTODY is ordered as follows N/A

Count _____ for a range from _____ to _____ months,
Count _____ for a range from _____ to _____ months,
Count _____ for a range from _____ to _____ months,

or for the period of earned release awarded pursuant to RCW 9 94A 728(1) and (2), whichever is longer, and standard mandatory conditions are ordered [See RCW 9 94A 700 and 705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69 50 or 69 52 RCW offenses not sentenced under RCW 9 94A 660 committed before July 1, 2000 See RCW 9 94A 715 for community custody range offenses, which include sex offenses not sentenced under RCW 9 94A 712 and violent offenses committed on or after July 1, 2000 Use paragraph 4 7 to impose community custody following work ethic camp]

54

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories, or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply

a) the defendant committed a current or prior		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9 94A 411)
iv) Domestic violence offense (RCW 10 99 020)		
v) Residential burglary offense		
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9 94A 745		

While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at DOC-approved education, employment and/or community restitution (service), (3) not consume controlled substances except pursuant to lawfully issued prescriptions, (4) not unlawfully possess controlled substances while in community custody, (5) pay supervision fees as determined by DOC, and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9 94A 712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Pay all court-ordered legal financial obligations

Report as directed to a community corrections officer

Notify the community corrections officer in advance of any change in defendant's address or employment

Remain within prescribed geographical boundaries to be set by CCO

☐ The defendant shall not consume any alcohol and shall submit to random breath testing as directed by DOC for purposes of monitoring compliance with this condition

☐ Defendant shall have no contact with _____

☐ The defendant shall undergo evaluation and fully comply with all recommended treatment for the following

☐ Substance Abuse

☐ Mental Health

☐ Sexual Deviancy

☐ Anger Management

☐ Other _____

☐ The defendant shall enter into and complete a certified domestic violence program as required by DOC or as follows _____

☐ The defendant shall not use, possess, manufacture or deliver controlled substances without a valid prescription, not associate with those who use, sell, possess, or manufacture controlled substances and submit to random urinalysis at the direction of his/her CCO to monitor compliance with this condition

☐ The defendant shall comply with the following additional crime-related prohibitions _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here _____

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here _____

54

- 47 ☐ **WORK ETHIC CAMP** RCW 9 94A 690, RCW 72 09 410 The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6
- 48 **OFF LIMITS ORDER** (known drug trafficker) RCW 10 66 020 The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections _____

V NOTICES AND SIGNATURES

- 51 **COLLATERAL ATTACK ON JUDGMENT** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10 73 100 RCW 10 73 090
- 52 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9 94A 760 and RCW 9 94A 505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9 94A 760(4) and RCW 9 94A 753(4)
- 53 **NOTICE OF INCOME-WITHOLDING ACTION** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9 94A 7602. Other income-withholding action under RCW 9 94A 760 may be taken without further notice. RCW 9 94A 7606
- 54 **RESTITUTION HEARING**
☐ Defendant waives any right to be present at any restitution hearing (sign initials) _____
- 55 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9 94A 634
- 56 **FIREARMS** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identification, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9 41 040, 9 41 047
- 57 ☐ The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46 20 285

57

58 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision RCW 9 94A 562

59 OTHER Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party

DONE in Open Court and in the presence of the defendant this date APRIL 18, 2008

Christine A. Pomeroy
Judge/Print name
Christine A. Pomeroy

[Signature]
Deputy Prosecuting Attorney
WSBA No. 16786
Print name JOHN M "JACK" JONES

[Signature]
Attorney for Defendant
WSBA No 18174
Print name JAMES SHACKLETON

VOTING RIGHTS STATEMENT RCW 10 64 140 I acknowledge that my right to vote has been lost due to felony conviction If I am registered to vote, my voter registration will be cancelled My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9 94A 637, b) A court order issued by the sentencing court restoring the right, RCW 9 92 066, c) A final order of discharge issued by the indeterminate sentence review board, RCW 9 96 050, or d) A certificate of restoration issued by the governor, RCW 9 96 026 Voting before the right is restored is a class C felony, RCW 92A 84 660

Defendant's signature [Signature]

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands I translated this Judgment and Sentence for the defendant into that language
Interpreter signature/Print name _____

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office

WITNESS my hand and seal of the said Superior Court affixed this date _____

Clerk of the Court of said county and state, by _____, Deputy Clerk

57

IDENTIFICATION OF DEFENDANT

SID No WAI7013312

(If no SID take fingerprint card for State Patrol)

Date of Birth 07/24/1977

FBI No 432801AC2

Local ID No _____

PCN No 766942148

Other _____

Alias name, DOB _____

Race

☐ Asian/Pacific
Islander

☐ Black/African-American

☒ Caucasian

Ethnicity

☐ Hispanic

Sex

☒ Male

☐ Native American

☐ Other _____

☒ Non-Hispanic

☐ Female

FINGERPRINTS I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto Clerk of the Court, Deputy Clerk, K. Woods Dated 4/18/08

DEFENDANT'S SIGNATURE X

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously

51

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON

NO 07-1-02163-2

Plaintiff,

VS

WARRANT OF COMMITMENT ATTACHMENT TO
JUDGMENT AND SENTENCE (PRISON)

RYAN WAYNE ALLEN,

Defendant

DOB 07/24/1977
SID WA17013312 FEI 432801AC2
PCN 766942148
RACE W
SEX M
BOOKING NO C0148394

THE STATE OF WASHINGTON TO

The Sheriff of Thurston County and to the proper officer of the Department of Corrections

The defendant RYAN WAYNE ALLEN has been convicted in the Superior Court of the State of Washington for the crime(s) of
UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (2 COUNTS), BAIL JUMPING

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of
Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant
for classification, confinement and placement as ordered in the Judgment and Sentence

By direction of the Honorable

Christine A. Pomeroy

BETTY J GOULD

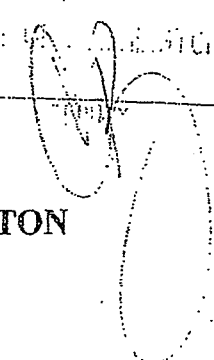
CLERK

By

K. Woods
DEPUTY CLERK

APPENDIX D

FILED
COUNTY CLERK
TACOMA

SEP 11 AM 8:51
STATE OF WASHINGTON
BY 

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 37646-6-II

Respondent,

v.

RYAN WAYNE ALLEN,

UNPUBLISHED OPINION

Appellant.

HOUGHTON, P.J. — Ryan Allen appeals his conviction for two counts of unlawful possession of a firearm, arguing that the trial court erred in denying his motion to suppress evidence seized in an unlawful search. He further appeals his conviction for bail jumping, arguing that the bail jumping statute is impermissibly vague and that the State failed to give him proper notice of a hearing leading to his bail jumping charge. We affirm the unlawful possession conviction but reverse and remand with instructions to dismiss with prejudice the bail jumping conviction.

FACTS

Sometime past midnight on December 21, 2007, a Thurston County sheriff's deputy responded to a noise complaint. The deputy arrived at Allen's mobile home, located in an isolated area, from which the deputy heard music playing.

The music blared from Allen's mobile home so loudly that all the home's windows shook and the deputy could not hear his dispatch radio even when turned up to its maximum volume.

No. 37646-6-II

The deputy also noticed two cars parked in front of the home and a sign on the home that read, "No trespassing, violators will be shot and survivors will be prosecuted." Clerk's Papers (CP) at 30.

He knocked on the door twice before Allen answered. Allen aggressively opened the door while holding an assault rifle in his right hand. The deputy, who had come alone, stood face to face with Allen. The deputy later testified that it would have taken 10 to 20 minutes for assistance to arrive if he had called for backup.

The deputy ordered Allen to put down the weapon and Allen complied. The deputy pulled Allen out of the doorway and handcuffed him. The deputy asked Allen if any other persons presently occupied the home and if he had any other guns nearby. Allen answered that no one else was present and that he had a loaded .22 caliber rifle on his bed. The deputy entered the home, went into the bedroom, and secured the .22 caliber rifle.

The deputy radioed headquarters and learned that Allen had a previous felony conviction. As a result, Washington law forbade Allen from owning a gun. RCW 9A.040(1)(a). The deputy arrested Allen. The State charged Allen with two counts of first degree unlawful possession of a firearm: one count for the assault rifle, the other count for the .22 caliber rifle.

On December 21, 2007, pending Allen's trial, the court released him on his personal recognizance on his complying with three conditions: (1) submitting to scheduled urinalysis and breath testing, (2) not possessing any weapon or firearm, and (3) appearing in court on three days' notice from the State.

On Monday, February 11, 2008, at 1:07 P.M., the State filed a motion seeking revocation of Allen's conditional release because he had failed to submit to a scheduled urinalysis test.

No. 37646-6-II

That same day the State mailed him a notice of the motion, setting the hearing for Thursday, February 14, 2008, at 9:15 A.M. Allen failed to appear at the hearing. The State then charged him with one count of bail jumping.

Before trial, Allen moved to suppress the .22 caliber rifle as evidence, claiming the deputy obtained it after an illegal search of Allen's home under the Washington and United States Constitutions. The trial court declined to suppress the evidence.

A jury found Allen guilty on both counts of unlawful firearm possession and for bail jumping. He appeals.

ANALYSIS

UNLAWFUL POSSESSION OF A FIREARM

Allen first contends that the trial court erred in denying his motion to suppress the .22 caliber rifle. He asserts that the deputy seized the .22 caliber rifle in a search impermissible under the Fourth Amendment and article I, section 7 of the Washington Constitution.

With certain exceptions, the federal and state constitutions prohibit warrantless searches and seizures. *State v. Cardenas*, 146 Wn.2d 400, 405, 47 P.3d 127 (2002). One such exception is for exigent circumstances requiring immediate action, such as officer safety. *Cardenas*, 146 Wn.2d at 405; *State v. Smith*, 137 Wn. App. 262, 268; 153 P.3d 199 (2007), *aff'd on other grounds*, 165 Wn.2d 511, 199 P.3d 386 (2009).

Allen argues that the deputy's entry to secure the .22 caliber rifle was constitutionally prohibited because the deputy had no reason to be concerned for his safety. Because the deputy had taken away his assault rifle and because he had been handcuffed, Allen asserts the deputy had rendered him harmless.

To find exigent circumstances existed, the ground for an emergency search may not be merely pretextual. *Smith*, 137 Wn. App. at 269. An officer's belief that an emergency exists must be both subjectively and objectively reasonable. *Smith*, 137 Wn. App. at 269.

Under the subjective test, the deputy would be justified in relying on his own perception of any potential danger. Here, before knocking on Allen's door, the deputy observed a sign warning that trespassers would be shot, and Allen hurriedly opened the door with an assault rifle in hand. Both factors could have reasonably led the deputy to believe that Allen presented a potential, violent danger.

A more removed analysis of the situation also satisfies the objective test. The deputy testified that although Allen stated that no one else was in his home, he observed two cars in the driveway. The second car could have belonged to another potentially dangerous occupant with possible access to a weapon. Furthermore, because the deputy was alone and could not receive support from other deputies for some time, the deputy could have secured the .22 caliber rifle as a precaution in case Allen later attempted to escape or resist arrest. Allen's argument fails.

BAIL JUMPING

Allen further contends that his conviction for bail jumping must be reversed. He raises two arguments. First, that the bail jumping statute is impermissibly vague. Second, he argues that the State failed to give him the notice the trial court required when it imposed conditions for his release pending trial. Therefore, he asserts, insufficient evidence supports his conviction. As the second argument disposes of this issue, we do not address his vagueness claim.

We review a claim based on insufficiency of the evidence under the familiar standard set forth in *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In doing so, we view the

No. 37646-6-II

evidence in the light most favorable to the State to determine whether a rational fact finder could find the crime's essential elements beyond a reasonable doubt. *Salinas*, 119 Wn.2d at 201.

To prove that Allen committed bail jumping, the State had to show that with knowledge of the requirement of an upcoming appearance, he failed to appear "as required." RCW 9A.76.170. The trial court released him on his personal recognizance. One condition of release required him to "[a]pppear in court on three (3) days notice." Ex. 7. Another condition required him to report to the State for urinalysis tests. He did not report for urinalysis testing. In response, at 1:07 P.M. on Monday, February 11, the State filed a motion to revoke his release. The notice required him to appear in court on February 14 at 9:15 A.M.

Reviewing the relevant dates here, it becomes readily apparent that the State could not put a notice into the mail on Monday afternoon, February 11, and have Allen receive the required three days' notice of a 9:15 A.M. hearing on Thursday, February 14. At best, he would have had only two days' notice. The State simply did not give him the notice the trial court required, and he did not knowingly fail to appear. The State could not convict him for bail jumping under these circumstances. The conviction must be reversed and the matter remanded with instructions to dismiss. *State v. Smith*, 155 Wn.2d 496, 505, 120 P.3d 559 (2005) (remedy is reverse and dismiss without retrial where insufficient evidence support an element of the crime).

STATEMENT OF ADDITIONAL GROUNDS

Allen raises additional claims pro se in his statement of additional grounds.¹ His first claims appear to be that he received ineffective assistance of counsel.

¹ RAP 10.10(a).

An ineffective assistance of counsel claim requires a showing of deficient performance with resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Legitimate trial tactics and strategy form no basis for an ineffective assistance of counsel claim. *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Moreover, we do not review matters outside the trial court record. *State v. McFarland*, 127 Wn. 2d 322, 335, 899 P.2d 1251 (1995).

Here, Allen's arguments revolve around asking his trial and appellate counsel to do certain things. First, Allen cites several legal authorities he requested his trial counsel present at trial. His trial counsel, Allen states, did not deem these authorities to be useful to Allen's case. The legal authorities cited by Allen in his statement of additional grounds, however, include civil or administrative laws which do not relate to Allen's criminal liability² and a single case pertaining to a municipal noise ordinance which does not relate to the State's charges of unlawful possession of a firearm. *City of Everett ex rel. Cattle v. Everett District Court*, 31 Wn. App. 319, 641 P.2d 714 (1982).

Second, Allen cites evidence he believes trial counsel should have introduced at trial, namely, testimony stating that Allen's gate was closed when the deputy arrived and that the volume of the music coming from his house was less than 45 decibels. These claims comprise matters not related to the charges Allen faced, matters of trial tactics, or are outside the record. As Allen neither demonstrates deficient representation nor any prejudice, his ineffective assistance argument fails.

² Allen cites chapter 10.36 RCW (no such chapter is presently enacted); chapter 70.107 RCW; chapter 173.53 WAC; WAC 173-58-040.

No: 37646-6-II

Next, Allen argues that he could not be convicted of unlawful possession of a firearm because the State did not notify him upon his prior release from prison that law forbade him from owning a gun. The statute under which he was convicted, however, does not require that the State to do so. RCW 9.41.040(1)(a). This argument fails.

Allen also asserts that the trial court incorrectly calculated his offender score. As he will be resentenced on remand, we do not address this argument further.

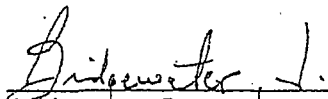
Finally, he raises claims based on the unlawful search and seizure and his bail jumping conviction. We otherwise addressed these same issues and, thus, do not discuss them further.

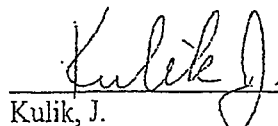
In summary, we affirm the unlawful possession of a firearm conviction and reverse and remand with instructions to dismiss the bail jumping conviction with prejudice.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.


Houghton, P.J.

We concur:


Bridgewater, J.


Kulik, J.

APPENDIX E

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

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BY RONALD R. CARPENTER

CLERK

83604-3

Supreme Court Case No. 83604-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
NOV 13 2013
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

State Of Washington,

Respondent,

V.

Ryan W. Allen,

Petitioner,

Petition For Review

Ryan W. Allen
Pro Se

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↑
Very important case law

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A. IDENTITY OF MOVING PARTY

Petitioner Ryan Allen, the appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Mr. Allen seeks review of division Two's unpublished opinion in State v. Ryan Allen No. 37646-6-II. A copy of the opinion is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW, D. STATEMENT OF THE CASE, E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Can a respondent be convicted of first degree unlawful possession of a firearm in two counts where the arresting officer did not follow procedure in a sound ordinance violation which is a civil matter? In accordance with the Chapter 10.36 PUBLIC DISTURBANCE NOISE under subsection .010 states in the declaration of the policy that the purpose of this chapter is to protect to the greatest extension possible both the right of free speech and the right to privacy within the home and upon real property. Its purpose is to guarantee ample channels of communication for all ideas, whether welcome or unwelcome by the recipients, yet also secure the privacy as a refuge from unwelcome noise. (Ord. 13378 (part), 2005: Ord. 9189 ss 1, 1989: Ord. 8072 ss 2 (part), 1985).

Under subsection .030 B. states this: is caused by the operation of any devise designed for sound production or reproduction, such as but not limited to radios, televisions, musical instruments phonographs and loudspeakers that exceed fifty-five dBA between the hours of seven a.m. and ten p.m. and forty-five dBA between the hours of ten p.m. and seven a.m., measured at any adjacent parcel or public right-of-way; or is caused by any source described in subsections A, B, and C of this section, which unreasonably disturbs or interferes with the peace, comfort or repose of owners of possessors of real

property determined at any point on the affected property.

For the purpose of this chapter, noise complaints may only be initiated by a person who resides, or owns property in the area affected by the noise complaint of.

(Ord. 13378 (part), 2005; Ord. 9189 ss 3, 1989; Ord. 8072 ss 2 (part), 1985). Apparently officer Simper did not feel that the law applied to him to follow. If he had I'm sure that officer Simper would have at the very least brought a decibel meter with him on his call of a noise complaint. Next he would have gone to the affected landowners residence that had called in the first place as described in the ordinance. It would be reasonable to believe that officer Simper was quite aware of the sound ordinance in it's entirety as with the experiance in which officer Simper has claimed to had through out his career as so stated in CP-5 of the direct examination by Mr. Jones. And had he known that, he would have also known that it is also not procedure as he had stated he did in CP-6, *Upon coming into the area -- well, a neighbor had called reporting excessive noise, music, coming from a residence, and I was driving down Sargent Road, slowed, rolled down my windows, and I could hear very loud music coming from the residence in question.* If officer Simper had known the procedure that he **must** follow he would have gone to the residence of the afflicted property. As in *City of Everett v. O'brien*, 31 Wash. App. 319, 641 P.2d 714 (Wa. App. 1-11-82), nowhere in the ordinance does it state anything about *officer's judgment*. Officer Simper, without taking a decibel reading enters Mr. Allen's private property in which he has a right to privacy because his property was fully fenced, a closed gate with *no trespassing* signs conspicuously on it; see *State v. Gare*, 77 Wn. App. 333, 890 P. 2d 1088 (1995); *State v. Dodson* 110 Wn. App. 112, 39 P. 3d. 324 (2002). Therefore officer Simper did not have legal justification to enter Mr. Allen's property; because a violation or *infraction* was not proven officer Simper did not have probable cause as a result and thusly proceeded to enter Mr. Allen's property. Therefore, officer Simper violated Mr. Allen's fourth amendment right against *unreasonable search and seizure*.

Chapter 10.38 CIVIL PENTALTIES FOR NOISE VIOLATIONS, clearly states the *policy* under subsection .010 as follows: It is the policy of Thurston County to enforce, to the extent resources permit, the rules setting maximum noise levels established

by the State Department of Ecology pursuant to RCW Chapter 70.107. Local government may enforce these rules only through imposition of a *civil* penalty pursuant to RCW 70.107.050. (Ord. 9219 (part), 1989). It further goes on to say in subsection .030 *service of notice of violation: The civil penalty is imposed by the service of a notice of violation on the person committing the violation. Service of the notice shall be as provided in RCW 4.28.080. However, if, in the exercise of reasonable diligence, service cannot be made as provided in RCW 4.28.080, service may be accomplished by mailing the notice of violation to the person to be served at the last known address by certified mail with return receipt requested. (Ord. 9219 (part), 1989).* If in fact officer Simper had obtained a decibel reading and it had been over the the dBA level stated in the ordinance officer Simper still did not execute the *service of notice in violation* properly either. If he is not able to access the residence in which he is trying to give notice he is to mail it as stated in the subsection .040 and have the information in the notice as specified in subsection .050, which is also an incorporation of state law, see RCWs listed above. As a direct result of procedure not followed unlawful search and seizure was committed causing all evidence from this point inadmissible in a court of law for the evidence was unlawfully obtained and should have been suppressed during the suppression hearing before trial. This also directly related to ineffective counsel, since Mr. Allen did expressed his concerns of the incompetency of Mr. Shackleton and was denied motion to receive new counsel.

2. Officer Simper then goes on to violate the *knock and announce* statute also known as RCW 10.30. Officer Simper proceeded up to Mr. Allen's mobile, CP-6, which was dark and knocked once, and waited for a response -- nowhere did he announce that he was law enforcement. The officer then knocked louder a second time, but again nowhere in either the clerk's papers in the motion to suppress CP-7-8 or trial and sentencing CP-11 did he announce himself as any kind of law enforcement, *police-open-up* or *sheriff-open-up*. As a result the defendant answered the door, which has no peephole, armed with the weapon pointed down. It wasn't until then that the defendant Mr. Allen saw the person who was knocking, and that he was law enforcement. The officer, fearing for his safety, ordered the defendant to *put down the weapon*, which he did quickly; and

was immediately handcuffed by the officer. See trial CP-11. In *State v. Richards*, 136 Wn. 2d 361, 962 P.2d 118 (1998) the police or law enforcement must #1 knock and #2 announce their identity and then #3 announce their purpose for being there, and finally #4 allow a brief waiting period prior to entry. See *U.S. v. Ramires*, 91 F. 3d 1297 (1996); *U.S. v. Bustamante-Gamez*, 488 F. 2d 4, 10-11 (1973), strict compliance with the *knock and announce* statute is required, *State v. Richards*, 87 Wn. App. 285, 941 P. 2d 710 (1997). This statute and doctrine was enacted so as to avoid the exact situation that happened - endangering law enforcement personnel, while also protecting persons from 4th amendment violations of unreasonable search and seizure. See *State v. Myers*, 102 Wn 2d 584, 689 P. 2d 38 (1984). This again should have been suppressed during the suppression hearing and was allowed into court at fault of ineffective counsel.

3. Mr. Allen's Fifth Amendment rights were also violated by an unwarranted *custodial interrogation*. Mr. Allen was immediately handcuffed on his porch after obeying the officer's command to *lay down the weapon*. Upon doing so the officer asked Mr. Allen if there were more weapons in the house, CP-11-12. Since this appearance by officer Simper was for noise, and Mr. Allen was handcuffed, there was absolutely no need to ask if anymore weapons were in the house. There was no *felony in progress*; see *State v. Cunningham*, 116 Wn. App. 219, 65 P. 3d 325 (2003) or a *completed felony*; see *State v. Williams* 34 Wn. App. 662, 663, P.2d 1368 (1983). The question about more firearms was therefore, unwarranted, given Mr. Allen being handcuffed and alone. Mr. Allen was in custody - being handcuffed because he was not free to *just leave and end the contact*. See *State v. Sargent*, the court stated: *Once a person is taken into custody, the presumption of voluntariness disappears*; *Minnisota v. Murphy*, 465 U.S. 420, 429, 79 L. Ed. 2d 409, 104 S. Ct. 1136 (1984). The officer then proceeded to ask questions regarding as to how many, and where anymore guns were located while Mr. Allen was handcuffed, CP-16-17. This fits the definition of *custodial interrogation* as stated on P650 of *Sargent* quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 64 L. Ed. 2d 257, 100 S. C.T. 1682 (1980); officer Simper was looking for possible incriminating information, so by the *Innis definition* this questioning is considered a *custodial interrogation*; Miranda rights should have been given to Mr. Allen by officer Simper, they were not and the

presumption that the statement given to a law enforcement officer while in physical custody of him *handcuffed* was completely voluntary is absurd. Mr. Allen's 5th amendment rights were clearly violated when officer Simper asked him questions while Mr. Allen was handcuffed, unrelated to the *noise complaint* is unconstitutional and a result, any statement so obtained is inadmissible, and again this not being suppressed is a direct result of ineffective counsel.

4. As for RCW 9.41.047 (1), the appellant court erred in stating that the courts are not required in notification of firearm probation. In fact according to the law the courts are mandated to notify the defendant of any firearm probations *written and verbally*. *The rule that ignorance of the law is not a defense to a criminal charge does not automatically apply to malum prohibitum offense (viz., an act that is wrong because it is prohibited) if the person committing the offense reasonably and in good faith relied on legally erroneous and actively misleading information imparted by an authoritative government official.* If we look in depth at the cases: Stat v. Leavitt 107 Wn. App. 361, 26 P.3d 622 (2001); State v. Minor 162 Wn.2d 796, 172 P.3d 1162 (2008); we will see that it has been defined in these two cases that there is a mandate that requires exactly that, notification written and verbally. Under the law it would make no sense to get back a right of possessing a firearm if the right was never lost. Not to mention that there were in fact probations notified at the sentencing in the case on Mr. Allen's previous case in which this all stems from and did not include any firearm probations. These probations were no contacts between curtain people. Also see appendix including letter from probation officer stating her *total certainty that Mr. Allen was at no time informed by our Court or myself of firearm probation.* And at no time has this either been reported to the Department of Licensing. Furthermore also in the appendix is a copy of a tag from the Thurston County Sheriffs Department that they can say for certain that they had released this very firearm to Mr. Allen a few years prior after a background check and then confirming that in fact Mr. Allen could possess a firearm. Now if that is not misleading information by an authoritative government official please define what is. So if at no time Mr. Allen has been notified by the courts or a law enforcement agency in accordance with 9.41.047(1) while Mr. Allen was a juvenile during sentencing and knowing that at this

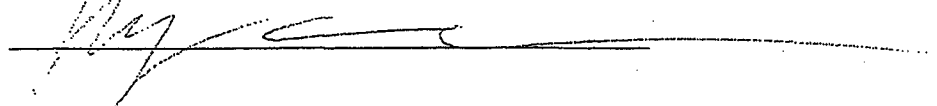
time that Mr. Allen probably did not have any extensive knowledge of the law at the time than it is affirmative that Mr. Allen was in fact misled in good faith by a authoritative government official. Mr. Allen's two charges of unlawful possession of firearm should be reversed.

5. Failure by trial attorney to notify Mr. Allen of a re-trial under CrR Retrial Rule 7.5 New Trial (3), (6), (7), (8); and then the appellant court to consider RAP Rule 9.11 Additional Evidence On Review.

F. CONCLUSION

1. The relief sought here is the reversal of the charge unlawful possession of firearm in the first degree in count 1 & 2 as of 11-13-09.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Ryan W. Allen', is written over a horizontal line.

Ryan W. Allen

APPENDIX F

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RYAN WAYNE ALLEN,

Petitioner.

NO. 83604-3

ORDER

C/A NO. 37646-6-II

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Chambers, Fairhurst and Stephens, considered at its March 2, 2010, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 3rd day of March, 2010.

For the Court

Madsen, C.J.
CHIEF JUSTICE

CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Response to Personal Restraint
Petition, on all parties or their counsel of record on the date below as
follows:

☒ US Mail Postage Prepaid

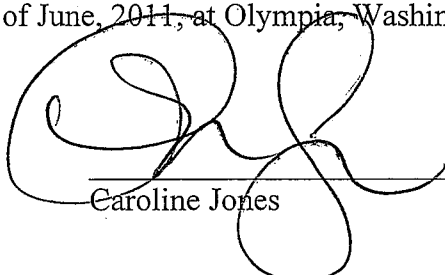
DAVID C. PONZOHA, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

AND TO: HARRY WILLIAMS
KELLER ROHRBACK LLP
1201 THIRD AVE, STE 3200
SEATTLE, WA 98101-3052

FILED
COURT OF APPEALS
DIVISION II
11 JUN 23 PM 12:33
STATE OF WASHINGTON
BY _____
DEPUTY

I certify under penalty of perjury under laws of the State of
Washington that the foregoing is true and correct.

Dated this 22 day of June, 2011, at Olympia, Washington.



Caroline Jones

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent, NO. 41345-1-II

vs.

RYAN WAYNE ALLEN,

Appellant.

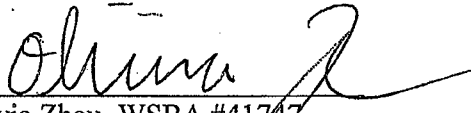
NOTICE OF SUBSTITUTION OF
COUNSEL

TO: David C. Ponzoha
Court Clerk
Court of Appeals, Division II
950 Broadway
Tacoma, WA 98402-4454

AND TO: Harry Williams, IV, attorney for Ryan W. Allen

PLEASE TAKE NOTICE that counsel for the State of Washington shall be Olivia Zhou, Deputy Prosecuting Attorney for Thurston County, 2000 Lakeridge Drive SW #2, Olympia, WA 98502, and all further pleadings and papers shall be served upon said attorney at the stated address.

Submitted this 10 day of May, 2011.


Olivia Zhou, WSBA #41747
Deputy Prosecuting Attorney

I, Chong McAfee, hereby certify that a true and correct copy of this document was served to the Appellant's attorney via electronic mail on this May 10, 2011. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Paralegal

NOTICE OF SUBSTITUTION OF COUNSEL

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358



Washington State Court of Appeals

Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

May 9, 2011

Harry Williams, IV
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hwilliams@kellerrohrback.com

Carol L. La Verne
Thurston County Prosecutor's Office
2000 Lakeridge Dr SW Bldg 2
Olympia, WA 98502-6045
Lavernc@co.thurston.wa.us

CASE #: 41345-1-II
Personal Restraint Petition of: Ryan Wayne Allen

Counsel:

On the above date, this court entered the following notation ruling:

A RULING SIGNED BY THE CLERK:

Respondent is granted an extension of time to and including 06/23/11 to file the Response to the Personal Restraint Petition. In view of the length of this extension, the court will not grant respondent any further continuances for filing its response absent a showing a compelling circumstances.

Very truly yours,

A handwritten signature in black ink, which appears to read "David Ponzoha", is written over a horizontal line.

David C. Ponzoha
Court Clerk

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
NO. 41345-1-II

IN RE THE PERSONAL
RESTRAINT PETITION OF

RYAN WAYNE ALLEN

MOTION FOR EXTENSION
OF TIME FOR FILING
RESPONDENT'S BRIEF

Thurston County Superior
Court
NO. 07-1-02163-1

1. IDENTITY OF MOVING PARTY

Respondent, State of Washington, by and through Carol La Verne,
Deputy Prosecuting Attorney, in and for Thurston County.

2. STATEMENT OF RELIEF SOUGHT

A 45-day extension of time for filing respondent's brief.

3. FACTS RELEVANT TO MOTION

The State's response in this PRP is due Monday, May 9, 2011. As this court is aware, there were several personnel changes in the Thurston County Prosecutor's Office early in 2011 and the position of appeal deputy was left vacant for approximately five weeks. A significant backlog accumulated in that time. In March I was assigned primary responsibility for Thurston County criminal appeals, but I also have a trial case load and cannot give appeals my

full attention. In addition, I had an argument in the Supreme Court this week in State v. Lormor, Case No. 84319-8, which took a significant amount of preparation time. I am currently working on the State's response in State v. Zachary Collins, Case No. 41179-2-II; that response was originally due on April 25, 2011. When this court granted an extension to May 25, it indicated there would be no further continuances, so I must necessarily work on that.

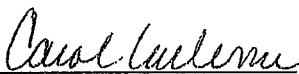
I have not previously requested an extension of time in this matter.

4. ARGUMENT AND CONCLUSION

For all the reasons stated above, the State respectfully requests an extension of 45 days, until June 23, 2011, to file its response.

DATED this 6th day of May, 2011.

JON TUNHEIM
Prosecuting Attorney



Carol La Verne
WSBA # 19229
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I certify that I served a copy of the Respondent's Motion for Extension of Time for Filing Respondent's Brief, on the date below as follows:

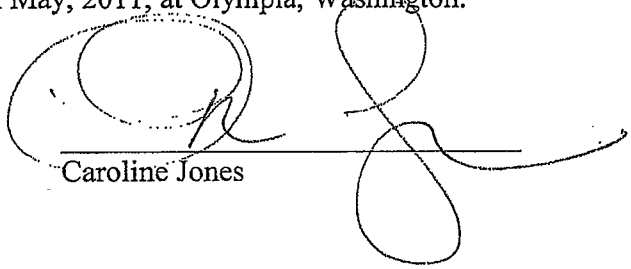
Electronically filed at Division II

TO: DAVID C. PONZOHA, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

HARRY WILLIAMS, IV
LAW OFFICE OF HARRY WILLIAMS, LLC
PO BOX 19336
SEATTLE, WA 98109
HARRY@HARRYWILLIAMS.COM

I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 6 day of May, 2011, at Olympia, Washington.



Caroline Jones

THURSTON COUNTY PROSECUTOR

May 06, 2011 - 9:31 AM

Transmittal Letter

Document Uploaded: prp2-413451-Motion for Extension of Time.tif

Case Name:

Court of Appeals Case Number: 41345-1

Designation of Clerk's Papers

Statement of Arrangements

■ Motion: Motion for Extension of Time

Answer/Reply to Motion: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): ____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: ____

Sender Name: Caroline Jones - Email: jonescm@co.thurston.wa.us

A copy of this document has been emailed to the following addresses:

harry@harrywilliamsllaw.com